Act and the FCC's implementing rules. 19/ Similarly, Qwest has a concrete and specific legal obligation to provide collocation as referenced in its SGAT and its approved interconnection agreements with CLECs in Minnesota. Bumgarner Collocation Decl. ¶ 15; *Qwest 271 Order* ¶ 314 n.1131 ("We also conclude that Qwest provides legally binding terms and conditions for collocation in its interconnection agreements and SGATs."). Qwest provides commercial volumes of collocation. in a high-quality manner that satisfies established standards for collocation applications and installations. Bumgarner Collocation Decl. ¶ 37. Qwesl's processes, procedures, capabilities, and performance, therefore, afford efficient competitors a meaningful opportunity to compete.

As the Commission has recognized, all fomis of collocation are available to CLECs throughout Qwest's region. *See Qwesl 271 Order* ¶ 314. Physical collocation is available at all Qwest premises that house network facilities, subject only to space limitations. Bumgamer Collocation Decl. ¶ 20. Qwest makes available caged, shared caged, cageless, Interconnection Distribution Frame ("ICDF"), remote, common-area-splitter, adjacent, and virtual collocation, all at the CLEC's option. Bumgarner Collocation Decl. ¶ 18. 20/ Consistent with 47 C.F.R. § 51.323(c), Qwest allows CLECs to collocate any equipment necessary for

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19/ *Qwest 271 Order* ¶ 314 & Appendix D, 720; *Virginia 271 Order,* Appendix C, ¶ 20; *see also Locul Competition First Report and Order,* 11 FCC Rcd at 15782-15811, ¶¶ 555-617 (adopting47 C.F.R. §§ 51.321, 51.323); *Advanced Services* ***Order,*** 13 FCC Rcd 24011 *(1998); aff'd in part, rev 'din part sub nom.*, *GTE Service Corp.* v. *FCC*, 205 F.3d 416 (D.C. Cir. 2000); *on recon., Advanced Services Reconsideration Order,* 15 FCC Rcd 17806 (2000), ***on*** *remand, Advanced Services Fourth Report and Order,* 16 FCC Rcd 15435, *aff'd sub nom., Verizon* ***Tel.*** *Cos. v. FCC*, 292 F.3d 903 (D.C.Cir. June 18, 2002), *recon. granted in part Advanced Services Order on Reconsideration of Fourth Report and Order, and Fifth Report and* ***Order;see*** *also Collocation Waiver Order,* **16** FCC Rcd 3748 (2000).

20/ SGAT §§ 8.1.1.2 & 8.2.3 *et seq.* (caged physical); 8.1.1.4 & *8.2.3 etseq.* (shared caged physical); 8.1.1.3 & 8.2.3 *etseq.* (cageless physical); 8.1.1.5 & *8.2.5 et seq.* (ICDF collocation); 8.1.1.7 (common area splitter collocation); 8.1.1.8, 8.2.6 *et seq.*, 8.2.7 *et seq.* & 8.4.6 *et seq.* (remote collocation); **8.1**.1.6, *8.2.6 et seq.*, & 8.4.6 *et seq.* (adjacent collocation).

interconnection or access to UNEs, regardless of whether it also performs a switching function, provides enhanced services capabilities, or offers other functions. *Id.* ¶ 19; SGAT § 8.2.1.2*et* sey.

Qwest offers collocation on a first-come, first-served basis, Bumgarner Collocation Decl. ¶ 46; SGAT § 8.2.3.2, and allows CLECs to reserve collocation space for various periods (depending upon the type ofequipment to be collocated). Bumgarner Collocation Decl. ¶ 31; SGAT §§ 8.4.1.7 *et seq.* 21/ If space limitations preclude physical collocation, Qwest makes available adjacent collocation in existing structures to the extent technically feasible. Burngarner Collocation Decl. ¶ 65; SGAT § 8.1.1.**6.** If no existing adjacent structurc space is available, Qwest permits CLECs to construct or otherwise procure an adjacent structure on property owned or controlled by Qwest, subject only to reasonable design, safety, and maintenance requirements. *Id.* If space later becomes available in the Qwest premises, CLECs are permitted, though not required, to relocate equipment to that interior space. Bumgarner Collocation Decl. ¶ 68; SGAT § 8.2.6.5. 22/

The Minnesota ALJ addressed an allegation raised by the MDOC on behalf of Eschelon that Qwest refuses to negotiate adjacent "off-site'' collocation with CLECs.

21/ The space reservation fee in Minnesota is twenty-five percent (25%) of nonrecumng chargcs. Bumgarner Collocation Decl. n. 49; SGAT § 8.4.1.7.3.

22/ AT&T had suggested that, as an alternative to individual cost basis ("ICB") pricing, Qwest should conduct a cost study for adjacent collocation. Bumgarner Collocation Decl. ¶ 40. However, the Minnesota ALJ held that there had been no demonstration of any imminent need for a pricing study of adjacent collocation and round that Qwest had demonstrated by a preponderance of the evidence that ICB pricing for adjacent collocation is consistent with Qwest's obligation to provide interconnection under § 271(c)(2)(B)(1). *Id.* With regard to remote collocation pricing, Qwest had already provided pricing through the cost docket proceeding. *Id.* To resolve a disagreement over the charging of CLECs for channel regeneration, Qwcst and AT&T agreed to revised language for SCAT Section 8.3.1.9, which Qwest has incorporated into the Minnesota SGAT, and which the Minnesota ALJ approved. Bumgarner Collocation Decl. ¶ 43.

Bumgarner Collocation Decl. ¶¶ 41-42. Qwest responded that this manner of interconnection is not within the meaning ofcollocation as defined by the FCC. Although the Minnesota ALJ held that Qwest's position was not unreasonable given the wording of 47 C.F.R. § 51.323(k)(3), the ALJ stated that because he considered the technology to be feasible, Qwest has an obligation to negotiate terms, conditions, and rates for adjacent off-site collocation, once such collocation is requested by a CLEC. Bumgamer Collocation Decl. ¶ 41. The Commission considered the matter in the *Qwest 271 Order,* however, and found the argument that Qwest should be required to provide adjacent "off-site" collocation to be "unavailing." *See Qwest 271 Order* at ¶314; Bumgarner Collocation Decl. ¶ 42.

As required by the FCC, Qwest maintains a publicly available document posted for viewing on the Internet that indicates all premises known to be full, updated within ten calendar days of the date Qwest learns a premises is out of physical space for collocation or that space has become available. Bumgarner Collocation Decl. ¶ 46; SCAT § 8.2.1.13. Qwest has inventoried all its central office premises and, to the extent any required information was not already posted on the website, that information was added. Bumgarner Collocation Decl ¶ 77. 23/ Qwest also maintains and makes available an inventory report with the locations of remote premises and the customer addresses served by them. Bumgarner Collocation Decl n.106; SCAT § 8.2.1.9.2

Qwest provides virtual collocation, in which it installs and maintains equipment on behalf of a CLEC, within the same intervals as physical collocation, and Qwest installs and maintains the equipment and services at the same level ofquality applicable to similar functions

23/ The Commission found that Qwest satisfies the requirements of Section 271, including its collocation obligations, without commenting on this aspect of Qwest's collocation procedures. *See Qwest 271 Order* ¶¶ 314, 513.

for its own cquipmcnt. Bumgamer Collocation Decl. ¶¶ 70-71; SCAT § 8.1.1.1, § 8.2.2.1. Qwest makes virtual, as well as physical, collocation available at remote premises. Bumgamer Collocation Decl. ¶ 70; SGAT § 8.2.7.2. Qwest also provides other types of collocation and services to satisfy CLEC needs. Qwest offers ICDF collocation, which allows CLECs not requiring active equipment in the Qwest central office to use the TCDF to access and/or combine Qwest UNEs, and common area splitter collocation, which allows CLECs to place digital subscriber line ("DSL") splitters at Qwest premises in order to provide advanced data services via line-sharing. *Id.* Bumgai-ner Collocation Decl. ¶¶ 45,55; SGAT §§ 8.1.1.5, 8.1.1.7, 8.2.5.1, 9.4.2.3. 24/

Qwest allows CLEC personnel access to collocated equipment and to common areas, such as bathrooms and drinking fountains, twenty-four hours a day, seven days a week. Bumgamer Collocation Decl. ¶ 8; SGAT § 8.2.1.19. Qwest takes reasonable measures to ensure CLEC equipment is afforded physical security equal to that provided for Qwest's equipment. Bumgamer Collocation Decl. ¶ 8; SCAT § 8.2.1.18.1.

Qwest completes CLEC collocation orders within installation intervals permitted by the FCC. Upon receiving a Collocation Application Form from a CLEC, Qwest provides a feasibility study within ten calendar days. Bumgamer Collocation Decl. ¶ 9. If the CLEC's first choice for collocation is not available, the study determines the feasibility of the CLEC's next

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24/ Qwest also allows CLEC-to-CLEC connections, either directly between collocation spaces, or through cross-conncets at an ICDF. Bumgarner Collocation Decl. ¶ 90; SCAT § 8.2.1.23 *et seq.* In compliance with 47 C.F.R. § 51.321(c), if a CLEC requests a collocation method used by an ILEC other than Qwest currently provided for in the SCAT or a Qwest interconnection agreement, Qwest treats the method as presumptively technically feasible and will provision it under the bona fide request ("BFR") process. Bunigarner Collocation Decl. ¶ 16; SGAT § 8.1.1. Furthcnnore, Qwest altered the ICDF collocation product through the change management process to permit Local Interconnection Service ("LIS") terminations at an ICDF collocation. Bumgamer Collocation Decl. ¶¶ 44, 56.

preferred choice. *Id.* Once the collocation request is found to be feasible, Qwest provides a quotation of charges associated with the request within twenty-five calendar days of the completion of the feasibility study. *Id.* Once the CLEC formally accepts the quote, Qwest begins installation of the collocation arrangement. *Id.* The time interval for completing installation varies depending upon the type of collocation requested, whether the CLEC provides a timely acceptance of the collocation quote, whether (for virtual collocation) the CLEC delivers collocated equipment in a timely manner, and whether major infrastructure additions or modifications are required. *Id.* 25/ Collocation installation intervals may also be affected if Qwest receives an extraordinary number of complex collocation applications within a limited time frame. Bumgamer Collocation Decl. ¶¶ 30, 39; SGAT § 8.4.1.9. 26/ In such cases, although Qwcst uses its best efforts to meet the standard SGAT intervals, if it nevertheless requires an interval in excess of the SGAT intervals Qwest must demonstrate to the MPUC that the need for such an extension is due solely to receipt of an extraordinary number of complex collocation applications in a limited time frame. *Id.* 27/

25/ Qwest believes that the FCC's *Collocation Waiver Order* expressly allows Qwest to condition CLEC reliance on the collocation provisioning intervals in the FCC's rules upon the receipt of forecasts. However, in Minnesota, Qwest has acquiesced to the differing interpretation advanced by AT&T and accepted by the ALJ, and has deleted language from the SGAT providing additional time for unforccasted orders. Bumgarner Collocation Decl. ¶¶ 27,38.

26/ In the *Qwest 271 Order,* the Commission found that Qwest satisfies Section 271, including its collocation obligations, without commenting on the limitations on Qwest's ability to meet the standard intervals for an extraordinary number of or particularly complex collocation installations. *Qwest 271 Order* ¶¶ 314, 513.

27/ The Minnesota ALJ accepted Qwest's SGAT Section 8.4.1.9; however, he suggested that the MPUC should consider precluding the application of the exception in SGAT Section 8.4.1.9. when the CLEC had forecasted the collocation applications, or where the collocation request augments an existing collocation arrangement. Bumgamer Collocation Decl. n.62. As noted in the preceding footnote, the Commission did not require the modification of SGAT Section 8.4.1.9 in the *Qwest 271 Order.*

Qwest has numerous collocation arrangements in place with CLECs in Minnesota. As of December 31, 2002, Qwest had collocation arrangements with ten CLECs in Minnesota. Qwesl was providing 602 units ofphysical collocation and 49 units ofvirtual collocation in 77 central office buildings. These central offices provide CLECs with access to 87.3 percent of Qwcst's retail access lines within Minnesota. Additionally, at least 51 of these central office buildings currently house three or more collocators' equipment with access to 74.2 percent of Qwest's retail access lines. Qwest also has completed 616 augments to CLECs' collocation arrangements. Bumgamer Collocation Decl. ¶ 37. There have been no requests for remote collocation in Minnesota. *Id*

Qwest has met or exceeded the benchmark objectives for each of the collocation performance measures in Minnesota. For the four-month period from October 2002 through January 2003, Qwest timely completed 100% of collocation feasibility studies requested by CLECs. Williams Decl. ¶¶ 82-83; Att. 5, App. D, Minnesota Commercial Performance Results at 48-49 (CP-3, CP-4). This conimercial performance surpasses the 10-day and 90% benchmarks under the feasibility study PIDs. ***See*** Williams Decl. ¶ 81. Qwest's collocation installation performance likewise has been excellent during this four-month period. Qwest completed 100% of its installation commitments *on* time, with average intervals substantially shorter than the 90. 120 and 150-day benchmarks. Williams Decl. ¶ 83; Att. 5, App. D, Minnesota Commercial Performance Results at 45-46 (CP-1, CP-2).

These data, together with the performance data discussed above with respect to Interconnection, show indisputably that Qwest is providing interconnection trunking and collocation to competitors in Minnesota on a nondiscriminatory basis. CLECs in Minnesota therefore have, and will continue io have, access to the fundamental prerequisite of local

exchange competition – the ability to send their customers' calls to, and receive calls from, customers of Qwest and other carriers. Consequently, the Commission should find Qwest has satisfied the requirements of Checklist Item 1 in Minnesota.

2. Checklist Item 2: Access to Network Elements

Qwest provides "nondiscriminatory access to network elements" on an unbundled basis, and in a timely, nondiscriminatory manner, pursuant to Sections 271(c)(2)(B)(ii) and 251(c)(3) of the **Act** and the FCC's rules and policies. 47 U.S.C. §§ 271(c)(2)(B)(ii), 251(c)(3). Qwest gives CLECs access to network elements at any technically feasible point within its network. *See generally* Declaration of Lori **A.** Simpson and Karen A. Stewart, Access to Unbundled Network Elements ("Simpson/Stewart UNEs Declaration"), Att. 5, App. **A.** Through negotiated, state-approved interconnection agreements and pursuant to Section 9 of its SGAT, Qwest has a legally enforceable obligation to provide each of the UNEs identified in the FCC's rules and orders. 47 C.F.R. § 51.319; *UNE Remand Order,* 15 FCC Rcd at 3704 ¶ 15; *Locul Competition First Report and Order*, 11 FCC Rcd at 15683 ¶ 366; *Line Shoring* ***Order,*** 14 FCC Rcd at 20914-15, ¶¶ 4-5; SCAT § 9.

Qwest recognizes that in its Triennial UNE Review proceeding, the Commission modified its requirements with respect to some unbundled network elements. Qwest has made no changes to any of its policies and practices in the wake of the Commission's decision and is continuing to provide UNEs in accordance with currently applicable requirements. Once the Commission issues an order in the Triennial proceeding, Qwest will review its UNE policies and practices and will continue to ensure that they are consistent with applicable federal law.

Current FCC rules require ILECs to provide the following network elements on an unbundled basis: local loops, subloops, network interface devices ("NIDs"), local and tandem switching capability, dedicated and shared transport, dark fiber, signaling and call-related

databases, OSS, and the high-frequency portion of the loop. 47 C.F.R. § 51.319. Qwest provides CLECs access to all the features, functions and capabilities of the specified UNEs in a manner that allows CLECs to provide any telecommunications service any such network element is capable of providing. 28/ This list is not static or exclusive; pursuant to changes in FCC Rules, state regulations or the bona fide request ("BFR") process, CLECs may identify and request that Qwest furnish additional or modified UNEs to the extent required under Section 251(c)(3) of the Act and other applicable law. SCAT § 9.1.1.

The quality of. and access to, an unbundled network element that Qwest provides is equal among all carriers requesting access to that element. Qwest provides access to UNEs in substantially the same time and manner as it provides to itself, or, if Qwest does not provide access to itself, in a manner that provides the CLEC with a meaningful opportunity to compete. Simpson/Stewart UNEs Decl. ¶ 16.

Qwest has developed a comprchcnsive process for completing CLEC requests for UNEs where facilities are not initially available. *Id.* ¶¶ 19-23. The Commission previously has rejected CLEC claims that Qwest's construction policies deny CLECs a meaningful opportunity to compete. *Qwest 271 Order* ¶ 362. Qwest's construction policies in Minnesota are at least as generous to CLECs as those the Commission approved in the Qwest III proceeding. 29/

28/ Certain of the enumerated items are addressed elsewhere in this brief. See Section III(B)(4)(a) (unbundled loops); Section III(B)(4)(b) and (c) (subloops and NIDs); Section III(B)(4)(d) (line sharing and line splitting); Section III(B)(5) (transport); Section III(B)(6) (switching); Section III(B)(10) (signaling and call-related databases).

29/ On a temporary basis, Qwest is operating in Minnesota under a merger agreement obligation that imposes interim service quality standards in certain situations where no facilities are available. The Merger Stipulation states the company agrees to "comply with the interim wholesale provisioning intervals and payment requirements . . . beginning January 1, 2001 until alternative carrier-to-carrier wholesale service standards are adopted or approved by the Commission, or until December 31, 2002, whichever is earlier." On December 19, 2002, Qwest indicated that it "unilaterally agrees to comply with the interim wholesale standards and payment

Furthermore, the Minnesota ALJ reviewed Qwest's construction policies and recommended approving them without changes. Simpson/Stewart UNEs Decl. ¶ 22.

a) UNE Combinations

As required by the Act, Qwest provides UNEs in a manner that allows requesting CLECs to combine elements in order to provide telecommunications services. **A** CLEC may combine network elements with other elements obtained from Qwest or with elements provided by the CLEC itself, provided that such a combination is technically feasible and does not impair the ability of other carriers to obtain access to other UNEs or to interconnect with Qwest's network. Simpson/Stewart UNEs Decl. ¶ 24. Qwest provides access to UNE combinations whether they arc UNEs that Qwest ordinarily combines for itself, UNEs Qwest does not ordinarily combine, or combinations of Qwest UNEs and CLEC UNEs. SGAT §§ 9.23.1.4, 9.23.1.5, 9.23.1.6; *see also New York 271 Order,* 15 FCC Rcd at 4077-78 ¶ 230. CLECs can combine UNEs in any technically feasible manner, Qwest offers CLECs **a** variety of methods by which CLECs can combine UNEs, such as physical, virtual, and cageless collocation. Simpson/Stewart UNEs Decl. ¶ 33. The only restrictions Qwest places on UNE combinations are those permitted under Commission rules. *Qwest 271 Order* ¶ 171.

Generally, UNE combinations are available in two preassembled forms: the UNE-Platform, or "UNE-P," and the Enhanced Extended Loop, or "EEL." UNE-P consists of a loop, switch port, shared transport, and access to vertical features and is offered in the following forms: (1) Plain Old Telephone Service (POTS) for residential or business customers; (2) either

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requircnients until the cffectivc date of any order issued by the Commission to adopt or reject these proposed SQS, as long as the effective date of the SQS is not later than June 1, 2003." The effect of this arrangement is that Qwcst will build facilities for CLECs in Minnesota under the circumstances described in the Qwcst III Application, and in some additional circumstances as well.

basic rate or primary rate ISDN; (3) Digital Switched Service (DSS); **(4)** PBX Trunks; (5) Centrex; and (6) public access lines. **All** the vertical switch features that are technically feasible for POTS, ISDN, DSS, Ccntrex and PBX services are available with that type of UNE-P. Qwest also makes its digital subscriber line ("DSL") service available for CLECs to purchase in conjunction with compatible UNE-P combinations, including UNE-P-POTS, UNE-P-Centrex and UNE-P-PBX. Simpson/Stewart UNEs Decl. ¶¶ 40-44.

The EEL is a combination of loop and dedicated interoffice transport and may also include multiplexing or concentration capabilities. It enables CLECs to access unbundled loops for end users without having to collocate in the central office in which those loops terminate. Qwest offers EEL facilities to CLECs that certify they will be used to provide significant local exchange traffic to a particular end user under one of the three options identified by the FCC in the *EEL Supplemental Order Clarification*. 15 FCC Rcd at 9598-9600 ¶ 22; Simpson/Stewart UNEs Decl. ¶¶ 52-59.

(1) Qwest Is Satisfying Significant CLEC Demand for UNE-P

Qwesl is successfully and promptly installing and repairing UNE-P for CLECs in commercial volumes. **As** of December 31,2002, Qwest had in service 84,428 UNE-P combinations for 17 CLECs in Minnesota. 30/

(2) Qwest Is Provisioning UNE-P in Accordance with Negotiated Performance Metrics

This section discusses Qwest's commercial performance with respect to **installation** *and* repair of UNE-P in Minnesota for the **period** October 2002 through January 2003. Qwest measures the actual conimercial performance of UNE-P-POTS,

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30/ This figure includes 54,980 "traditional" UNE-P combinations and 29,448 UNE Star combinations.

UNE-P-Centrcx-21, and UNE-P-Centrex. These pcrforniance data show that Qwest has successfully and promptly installed and repaired UNE-P for CLECs in Minnesota.

UNE-P-POTS. Qwest's performance in installing UNE-P-POTS for CLECs in Minnesota has been outstanding. Between October and January, out of a total of 36 installation performance measurements for UNE-P-POTS, Qwest achieved parity in all cases. Williams Decl. ¶ 221. Qwest is also rapidly repairing these lines when necessary. Between October and January, the overall CLEC trouble rate for UNE-P-POTS maintenance and repair was never higher than 0.88% and was at parity with Qwest's retail performance in every month. The only measurement tinder which Qwest recorded repeated misses was the repeat trouble rate for non-dispatch reports. But even there, excluding the "no trouble found" ("NTF") reports eliminates the disparity in two months. Furthermore, these misses should be considered in light of Qwest's overall repair performance for UNE-P-POTS in Minnesota, which is very good. Out of a total of **44** measurements for UNE-P-POTS maintenance and repair, Qwest achieved parity in all but five cases. *Id.* ¶ 222.

UNE-P-Centrex 2/. For the entire period from October through January, Qwest provisioned UNE-P Centrex 21 lines in Minnesota at parity in each month for every single key measure of installation performance. *Id.* ¶ 223. Repair performance was also excellent. In all four months trouble rates were less than 1.00%, and Qwest missed parity only once. Under every other major repair performance metric for UNE-P-Centrex 21, Qwest achieved parity in all four months. *Id.* ¶ 224.

UNE-P-Centrex. Qwest met the vast majority of the performance standards measuring UNE-P-Centrex installation. Under every installation measure, Qwest achieved parity in at least three of four months, and out of a total of 36 performance measurements for UNE-P-

Centrex installation, Qwest achieved parity between retail and wholesale performance in all but two instances. *Id.* ¶¶ 225-27. Qwest's performance with respect to maintenance and repair of UNE-P-Centrex was also good. The only multiple month performance disparities recorded between October and January were four missed months under trouble rate. But even though Qwest did not achieve parity in any month, the trouble rate for CLEC UNE-P-Centrex was very low, averaging only 0.55% for the four months, which is outstanding by any standard. Trouble rates this low are not competitively significant, especially given that Qwest clears out-of-service trouble within the 24-hour interval nearly 100% of the time for non-dispatch, and in parity with retail for both dispatch and non-dispatch reports. Qwest provided parity service for repeat report rate in three out of four months for non-dispatch and dispatch troubles alike. Under all other repair measurements, Qwest's performance was on target and out of a total of **36** repair measurements, Qwest achieved parity in all but six cases. *Id.* ¶ 228.

(3) EELs

As of December 31, 2002, Qwest had in service **422** EELs for five CLECs in Minnesota; the volumes are low but steady. Under OP-3, Qwest must meet at least 90% of its installation commitments to CLECs. For diagnostic purposes only, EEL performance is also tracked under the following metrics: OP-4 (mean installation interval), OP-5 (installation quality), OP-6 (average delay for late orders), MR-5 (all troubles cleared within four hours), MR-6 (mean repair interval), MR-7 (repeat trouble rate), and MR-8 (overall trouble rate).

In Minnesota, Qwest has a four-month average for installation commitments met of 83.33%, missing the 90% benchmark established by the ROC in three of the last four months. However, in November, Qwest met the benchmark, while performance for January approached the benchmark with 85% of commitments met. Low volumes ordered makes this measurement sensitive to a few misses. There have been a total of only 120 EELs ordered in the last four

months. In October, Qwest met its commitment 16 out of 21 times. In November, Qwest met the benchmark, installing 23 of 25 EELs ordered on time. In December there were only seven orders with missed commitments, and only six missed in January. Though no standard has been established for installation quality, Qwest performed well, completing 92.52% of installations without problem. Delayed days performance was also good, averaging just 5.94 days for non-facility and facility delays combined. ***Id.*** ¶ 230.

3. Checklist **Item 3: Access to Poles, Ducts,** Conduits, and Rights-of-**Way**

Section 271(c)(2)(B)(iii) of the Act requires a Section 271 applicant to comply with Section 224 of the Act, which requires that ILECs "provide . . . telecommunications carrier[s] with nondiscriminatory access to any pole, duct, conduit, or right-of-way [the ILEC] own[s] or control[s]." 47 U.S.C. §§ 271(c)(2)(B)(iii), 224(f)(1), (2). *See also Qwest 271 Order,* App. K 747; *Texas 271 Order,* 15 FCC Rcd at 18478 ¶ 243 n.688 *(ciling Local Competition First Report and Order,* 11 FCC Rcd at 16080-81 ¶¶ 1175-77). An ILEC may deny access only on a nondiscriminatory basis, and only due to "insufficient capacity" or for "reasons of safety, reliability and generally applicable engineering purposes." 47 U.S.C. § 224(f)(2). *See also Qwest 271 Order,* App. K ¶ 47; *Texas 271 Order,* 15 FCC Rcd at I8478 ¶ 243 n.688 (*citing Local Competition First Report and Order,* 11 FCC Rcd at 16080-81 ¶¶ 1175-77). Qwest has made all the MPUC's recommended Checklist Item 3-related modifications to its Minnesota SGAT. Declaration of Thomas R. Freeberg, Access to Poles, Ducts, Conduits and Rights-of-Way ("Frcchcrg Access to Poles Decl."), Att. 5, App. A, ¶¶ 45-46. Moreover, this Commission has previously determined that Qwest meets the requirements of Checklist Item 3. *Qwesi 271 Order* ¶ 392.

The Act establishes a methodology by which the maximum just and reasonable rates ILECs may charge can he calculated. The FCC's rules mirror these requirements (see 47 C.F.R. § 1.1403(a) (access); *id.*, §§ 1.1409(e), 1.1417-1.1418 (charges)), and further require ILECs to (1) grant access (or issue a denial in writing stating the reasons therefor) within 45 days of a rcquest *(id.*, § 1.1403(b)); (2) provide at least 60 days written notice prior to any increase in pole attachment rates, demand for removal of attachments, or modification of facilities other than for routine maintenance or to respond to emergencies ***(id.*** § 1.1403(c)); and (3) charge non-recurring facilities modification fees necessitated by pole attachments at cost, on a cost-causer-pays basis. *Locul Competition First Report and* ***Order,*** 11 FCC Rcd at 16096 ¶ 1211.

Qwest makes all of its poles, ducts, conduits and rights-of-way available to competitors in Minnesota pursuant to Section 10.8 of its Minnesota SCAT, through individually-negotiated, state-approved interconnccction agreements, and under a stand-alone agreement developed prior to enactment of the 1996 Act. Freeberg Access to Poles Decl ¶¶ 15-18. The stand-alone agreement is available to any CLEC that seeks access to Qwest's poles, ducts, conduits or rights-of-way but does not wish to negotiate or opt into a comprehensive interconnection agreement with Qwest. *See id.* ¶¶ 17-18

Qwest takes several steps lo cnsure that CLECs have access in a nondiscriminatory manner to Qwest's poles, ducts, conduits and rights-of-way. Those steps include (1) providing access to records; (2) maintaining an explicit and easy-to-follow ordering and application process; ***(3)*** assisting prospective attachers throughout the ordering and application process and/or in planning attachments; (4) allocating space *to* itself and competitors on a nondiscriminatory basis; and *(5)* promptly responding to requests for access. *Id.* ¶ 20.

Qwest determines the availability of space in a non-discriminatory manner consistent with Section 224 of the Act and the FCC's orders and rules thereunder. *Id.* ¶ 36; SCAT § 10.8.2.6. Specifically, Qwest assigns space on a first-come, first-served basis. Qwest records its own designations for space in the same databases used to record CLEC space designations. *Id.* In accordance with FCC rules, Qwest does not reserve space for itself on or in its facilities. *Id.; Local Competition First Report and Order* ¶ 1170. In short, Qwest does not favor itself over other carriers in provisioning access to poles, ducts, conduits, or rights-of-way. Freeberg Access to Poles Decl. ¶ 36; *see* SGAT § 10.8.2.

Qwest completes make-ready and modification work for competitors in materially the same manner that it completes such **work** for itself. Qwest ensures that the costs of modifications are allocated only to the parties that benefit from them. Qwest, however, removes old, inactive cables at no charge *to* CLECs. Freeberg Access to Poles Decl. ¶ 40.

Qwest applies rates consistent with the Commission's formulas. As of February 8 and July 30, 2001. Qwest recognized new rates, consistent with the FCC formulas adopted pursuant to Section 224(e) of the Act, for attachers that provide telecommunications service. In accordance with FCC rules, the rate for telecommunications attachers is being phased in through equal 20 percent increments over a five-year period. *Id.* ¶ 42. Qwest provides at least 60 days written notice of rate changes and facilities modifications or alterations. *Id.* Qwest's charges for pole and conduit inquiries, field verifications, make-ready **work** and facilities modifications are based on the actual cost of that work. *Id.* ¶ 43.

Qwest makes all of its poles, ducts, conduits and rights-of-way available *to* competitors in Minnesota. **As** of December 31, 2002, five CLECs occupied 72,003 feet of Qwest duct and four CLECs had attached to 701 Qwest poles in the state. *Id.* ¶ 47. These

quantities do not include carriers who have cable television provider status, but who may also be providing local telephone service. *Id*

The FCC has an extensive pole attachment complaint process if CLECs are dissatisfied with Qwcst's performance. *See* 47 U.S.C. §§ 1.1401 etsey. Qwest has not been the subject of any FCC pole attachment complaints

4. Checklist Item 4: Loops

a) Unbundled Loops

Section 271(c)(2)(B)(iv) of the Act requires that a BOC wishing to offer in-region interLATA service provide "local loop transmission from the central office to the customer's premises, unbundled from local switching or other services." 31/ The loop unbundling requirement applies to various types of loops, including 2-and 4-wire analog voice-grade loops, as well as 2- and 4-wire loops that arc conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals. ***See*** *Local Competition First Report and* ***Order,*** 11 FCC Rcd at 15691 ¶ 380; *UNE Remand Order, 15* FCC Rcd at 3772-73 ¶¶ 166-67.

Qwest is providing commercial volumes of unbundled loops, and is doing so in a high-quality manner that satisfies all established performance metrics. Qwest provides unbundled loops to CLECs in Minnesota in a timely, nondiscriminatory manner, consistent with the requirements of the Act and the FCC's rules and orders. 47 U.S.C. § 271(c)(2)(B)(iv); ***see***

31/ 47 U.S.C. § 252(d)(3); *see also Qwest 271 Order,* App. K ¶ 48. In the *UNE Remand* ***Order,*** the FCC defined the local loop as "a transmission facility between a distribution frame (or its equivalent) in the incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. The local loop network element includes . . . dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning." *UNE Reinand Order*, 15 FCC Rcd at 3772-78 ¶¶ 166-79; ***see*** *also* 47 C.F.R. § 51.319(a)(1).

also Qwest 271 Order, App. K ¶¶ 48-49; *UNE Remand Order,* 15 FCC Rcd at 3772-78 ¶¶ 166-79; 47 C.F.R. § 51.319(a)(1). Through its SGAT and negotiated, state-approved interconnection agreements, Qwest makes available to CLECs all types of loops identified by the FCC as part of the loop unbundling requirement, including voice-grade analog loops, xDSL-capable loops, and high-capacity loops. Declaration of William M. Campbell, Unbundled Loops ("Campbell Decl."), Att. 5, App. A, ¶¶ 11-24; *see also Local Competition First Report and Order,* 11 FCC Rcd at 15691 ¶ 380; *UNE Remand Order,* 15 FCC Rcd at 3772-73 ¶¶ 166-67. Qwest performs hot cuts for **CLECs** and provides **CLECs** with access to unbundled loops provisioned using integrated digital loop carrier ("IDLC") technology where technically feasible. Campbell Decl. ¶¶ 40-43, 54-55. In addition, Qwest conditions loops where necessary to allow CLECs *to* provide digital services. *Id.* ¶¶ 32-36. Qwest also gives CLECs nondiscriminatory access to pre-order loop make-up information. OSS Decl. at Sec. III(A)(2)(f). Qwest provides line sharing and line splitting, as well as subloops and network interface devices ("NIDs"). *See generally* Declaration of Karen A. Stewart, Line Sharing/Line Splitting ("Stewart Line Sharing Decl.") and Declaration of Karen A. Stewart, Network Interface Devices and Subloops ("Stewart NIDs/Subloops Decl."), both located at Att. 5, App. A.

Qwest has provisioned substantial numbers of unbundled loops to CLECs in Minnesota. As of December 31, 2002, Qwest had in service 106,827 unbundled loops in Minnesota. (These figures represent stand-alone loops only, not those provided as part of a UNE combination.) Specifically, Qwest had in service 98,577 unbundled voice-grade analog loops, 6,928 xDSL-capable loops, and 1,322 high-capacity loops. The volume of unbundled loops in service demonstrates that Qwest is provisioning loops to CLECs in Minnesota in a nondiscriminatory fashion.

The following section discusses Qwest's commercial performance with respect to installation and repair of unbundled loops in Minnesota for the period October 2002 through January 2003. The discussion is arranged according to the three main categories of loops: analog, xDSL-capable, and high-capacity loops. These performance data show that Qwest has successfully and promptly installed and repaired all types of unbundled loops for CLECs.

Analog ***Loops.*** Most of the loops Qwest provisions to CLECs in Minnesota are analog loops, and Qwest consistently provisions them in a timely and nondiscriminatory fashion. Under every key installation measurement for analog loops, Qwest achieved parity in all four months. Williams Decl. ¶ 234. Qwest also tracks the time it takes to complete hot cuts, which represents the amount of time a customer is out of service during the cut. Between October and January, Qwest averaged three minutes to perform the lift and lay procedure. *Id.* ¶ 235.

Qwcst also measures the on-time completion rate for coordinated installations of unbundled loops, about 90% of which are conversions of existing customers to CLEC service. Under this measurement, Qwcst performed no less than 99.3% of coordinated installations on time for analog loops and at least 97.4% on time in every month for all other loops, surpassing the negotiated performance benchmark in both categories each month. *Id.* ¶ 236.

Qwest's performance with respect to maintenance and repair of analog loops has also been outstanding. Between October and January, Qwest did not record a single performance disparity under any repair measurement. Of particular note is the excellent trouble rate, which has never been higher than 0.8% and has improved each month during that period. ***Id.*** ¶ 237.

xDSL-Capable Loops. Qwest's xDSL-capable loop offerings include 2-wire non-loaded, 4-wire non-loaded, ISDN-capable, and ADSL-qualified loops. The majority of xDSL-capable loops ordered by CLECs are 2-wire non-loaded loops. In this category of loops, Qwest's

performance between Octobcr and January was perfect. Qwcst's performance for other xDSL-capable loops, for which CLEC volumes were lower, was nearly as good: Qwest achieved panty in at least three of four months under every measure, missing panty only three times across all installalion measures. *Id.* ¶ 238.

Qwest's maintenance and repair of xDSL-capable loops was also strong. In the largest category of xDSL loops – 2-wire non-loaded loops – Qwest achieved parity in three of four months under the trouble rate nicasurement (and in the missed month, the CLEC trouble rate was only 0.38%) and in all four months under every other major repair measurement. In short, for the most common type of xDSL-capable loop, Qwest recorded only one performance disparity between October and January. *Id.* ¶ 239.

As for other xDSL-capable loops, Qwest's pcrformance was nearly perfect. Qwest achievcd parity in all four months under the PIDs that measure out of service clearance, trouble clearance, and the repair repeat report rate measurement. The only significant performance disparities Qwest recorded were under the trouble rate for ISDN-capable loops, where Qwesl Qwcst missed the parity standard all four months. Even there, however, the actual difference between the CLEC trouble rate and the retail trouble rate was slight, averaging only 0.63% over thc four months. Qwest has implemented an action plan to further improve the trouble rate, which includes holding weekly meetings to perform ongoing root-cause analyses to identify and implement appropriate corrective actions. *Id.* ¶ 240.

Conditioned Loops. At times, Qwest must condition the loop to make it xDSL capable. Qwest measures installation commitments *met* and installation intervals separately for conditioned loops. Belween October and January, Qwest's performance with respect to conditioned loop intervals was excellent. Qwest completed the installation, including

conditioning, well within the negotiated benchmark. For commitments met, Qwesi missed the benchmark in each month. Even so, the percentage of commitments met has improved each month since November. In January, only four orders did not meet the due date, resulting in a pcrcentagc approaching 88% – very near the 90% benchmark. *Id.* ¶ 241.

High-Capacity Loops. High-capacity loops represent only approximately 1.3% of the loops Qwest has in service for CLECs in Minnesota. Qwest's performance in provisioning these loops has been strong. Between October and January, Qwest recorded only one performance disparity under the installation service quality measurement for DS1-capable loops. Qwest achieved parity on every other installation measurement for high-capacity loops. *Id.* ¶ 242.

Qwest's maintenance and repair performance has been equally good. Qwest achievcd parity in every month under the PIDs that measure all troubles cleared within four hours, niean time to restore, and repeat trouble report ratc. While Qwest recorded three disparities under the trouble rate measurement for DS1-capable loops, the difference in the CLEC and retail trouble rates was only an averagc of 0.74% over the four-month period. *Id.* ¶ 243.

b) Subloops

Qwcst provides nondiscriminatory access to the subloop network element, defined by Commission rules as "any portion of the loop that is technically feasible to access at terminals in the [ILEC's] outside plant, including inside wire." 47 C.F.R. § 51.319(a)(2). An accessible terminal is "any point on the loop where technicians can access the wire or fiber within the cable without removing a splice casc to reach the wire or fiber within." *Id.* Such points "may include, but are not limited to, the pole or pedestal, the network interface device, the minimum point of

entry, the single point of interconnection, the main distribution frame, the remote terminal, and the feeder/distribution interface." *Id*

For subloop unbundling purposes, Qwest divides accessible terminals into two calcgories. "MTE terminals" are thosc within a building in a multiple tenant environment ("MTE") or accessible terminals physically attached to a building in an MTE. "Detached terminals" are all other accessible terminals. *See* Declaration of Karen **A.** Stewart, Unbundled Network Interface Devices and Subloops ("Stewart NID/Subloop Decl."), Att. *5*, App. **A,** ¶ 28. Different terms and conditions apply for MTE terminals than for detached terminals; all terms and conditions are in accordancc with the Commission's requirements for subloop unbundling. Stewart NID/Subloop Decl. ¶¶ 22-48.

Kcgionwide, Qwcst had 87 subloops in service for CLECs as of December 31, 2002. Because of the low subloop volumes. it is difficult to draw broad conclusions from Qwcst's subloop performance. Howcver, Qwest's performance with respect to the few orders it has received from CLECs has been excellent. Regionally, between March 2002 and January 2003, when there was activity, Qwest met 100% ofits subloop installation commitments in both the dispatch and non-dispatch categories. **As** for installation intervals, all subloop intervals since March met thc five-day standard interval. Finally, Qwest achieved 100% New Service Installation in all months since March. Williams Decl. ¶ 246

c) Network Interface Devices (NIDs)

Qwest provides nondiscriminatory access to the NID, defined by the FCC as "any *means of interconnection* of *end-user* customer premises wiring to an *ILEC's* distribution plant, such as a cross connect device used for that purpose." 47 C.F.R. § 51.319(b). Qwest allows requesting CLECs to connect their own loop facilities lo on-premises wiring through Qwest's NID or at any other technically feasible point. Stewart NID/Subloop Decl. ¶¶ 9-14.

'Through its SGAT and state-approved interconnection agreements, Qwest has undertaken a contractual obligation to provide unbundled NID access to CLECs. Qwest has received no orders for stand-alone unbundled NIDs in any state in its region. Qwest has provisioned NlDs only in conjunction with unbundled loops and subloops. Given the lack of demand, the ROC has not created any performance reporting requirements for NIDs. However, should CLECs request stand-alone NlDs at any time in the future, Qwest is prepared to provision them. *Id.* ¶ 21.

d) Line Sharing and Line Splitting

Qwest provides CLECs with access to the high frequency portion of the unbundled loop ("HFPL"). commonly known as line sharing, in accordance with Commission regulations. *See generally* Stewart Line Sharing Decl., Att. 5, App. **A.;** 47 C.F.R. § 51.319(h)(l)-(4); *Qwest 271 Order* at App. K ¶¶ 50-52; ***Line** Sharing **Order,*** 14 FCC Rcd 20912; *Line Sharing Reconsideration Order,* 16 FCC Rcd 2101. In a line sharing arrangement, the POTS service is provided by Qwest while the data service is provided by the CLEC. Qwest makes available to CLECs in Minnesota line sharing, line splitting, and loop splitting (similar to line splitting, in cases where the CLEC purchases unbundled loops rather than UNE-P). Stewart Line Sharing Decl. ¶¶ 7-8, 47-49, 56-58; *see also* SGAT §§ 9.4 (line sharing), 9.21 (line splitting), 9.24 (loop splitting). Qwest provides line sharing in a timely and nondiscriminatory manner and in a manner that provides CLECs with a meaningful opportunity to compete.

Qwest performs quality assurance testing on two aspects of line shared loops during provisioning. First, Qwest assures in its line shared loop provisioning process that there are no load coils on the loop by performing a load coil test prior to completing the service order. Next, at aminimum, central office wiring is tested to assure electrical continuity between the physical demarcation with the CLEC and the loop using an LSVT test set. *Id.* ¶ 37.

Additionally, in response to CLEC requests, Qwest has developed a router testing option that can bc requested in lieu of the LSVT test, as part of its line shared loop provisioning process. 32/ Upon request, Qwest will perform for CLECs the same physical layer continuity router testing for line shared loop provisioning that it provides to itself in any central office in which Qwest has deployed or will deploy Qwest DSL in the future. This test, while performed in a non-designed flow, will confirm data continuity between a Qwest DSL test set and the CLEC DSLAM. If the router test results in a failure to confirm data continuity, the order will be placed in jeopardy status until the fault is isolated and corrected by the responsible party in the provisioning process without the need for repair. *Id.* ¶ 38.

Qwest is able to meet CLECs' demand for line sharing in commercial volumes. As of December 31, *2002,* Qwcst had 26,083 unbundled shared loops in service across its 14-state region. This figure included 2,389 shared loops for five CLECs in Minnesota. *Id.* ¶ 45. Qwest's commercial performance with respcct to line sharing in Minnesota between October *2002* and January 2003 has been excellent.

Line sharing is generally provisioned without dispatching a technician. Under the measurement for installation commitments, which is measured against a 95% benchmark, Qwest surpassed the benchmark in every month between October and January. Qwest also met the benchmark Tor average installation interval in all four months. For every other installation measurement, the pcrformancc standard is parity with comparable retail service, and between October and January, Qwest did not record a single disparity between retail and wholesale performance under any installation PID. Williams Decl. ¶ 244.

32/ Qwest made this commitment even though the Commission does not require ILECs to provide rouler testing. *See Qwest* 27/ *Order* at ¶ 360.

Qwest's rcpair record for Iinc-sharing orders is also impressive. Between October 2002 and January 2003, Qwest achieved the performance standard for the measurements all troubles cleared within 48 hours and repair repeal report rate in all four months. Qwest also met the pcrformance standard in three of four months for the out of service cleared within 24 hours measurement for both dispatch and non-dispatch repairs, and for the trouble rate measurement For thc measurement concerning nican time to restore, Qwest recorded no disparities in the dispatch category and met the standard in two of four months in the non-dispatch category. *Id.* ¶ 245.

5. Checklist Item 5: Unbundled Local Transport and Dark Fiber

Qwest is complying with its obligation to offer "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." 47 U.S.C. § 271(c)(2)(B)(v). Qwest provides this service for dedicated transport, shared transport and dark fiber transport. Qwest has concrete and specific legal obligations pursuant to Sections 9.6, 9.8, 9.9 and 9.12 of its SCAT to provide CLECs with unbundled dedicated transport on a nondiscriminatory basis. The Minnesota ALJ found Qwest's unbundled local transport and dark fiber offering to be in compliance with Section 271. Declaration of Karen **A.** Stewart, Unbundled Local Transport ("Stewart Transport Declaration"), **Att. 5**, App. **A,** ¶¶ 8, 28-31;Declaration of Karen **A.** Stewart, Dark Fiber ("Stewart Dark Fiber Decl."), Att. 5, App. **A,** ¶¶ 4, 31-33; *Minnesota PUC ALJ Recommendations for* ***Checklist*** *Items 1, 2,* ***4,*** *5, 6, 11, 13, and 14* at 30, 39-41,104, In addition, the Commission previously has determined that Qwest meets the requirements of this checklist item. *Qwest 271 Order* ¶ 201.

a) Dedicated Transport

Dedicated transport refers to "ILEC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by

ILECs or requesting telecommunications carriers, or between switches owned by ILECs or requesting telecommunications carriers." *Local Competition First* ***Report*** *and Order* ¶ 440. Qwest's dedicated transport offerings provide CLECs with a single transmission path between Qwest end offices, serving wire centers, or tandem switches in the same LATA and state; they also include a bandwidth-specific transmission path between the Qwest serving wire center and the CLEC's wire center or an intercxchange carrier's point of presence located within the same Qwest serving wire center area. Stewart Transport Declaration ¶ 9. Qwest offers dedicated transport in DS0 through OC-192 bandwidths, as well as such higher capacities as evolve over time. *Id.*

If a CLEC orders a UNE combination that includes dedicated transport facilities, Qwest will perform requested and necessary cross connections between UNEs in the same manner that it would perforni such cross connections for its own end user customers. *Id.* ¶ 11. When transport is ordered separately (*i.e.*, not as part of a UNE combination), the CLEC is responsible for performing cross connections at its collocation or other mutually determined demarcation point, but such cross connections are not required when a CLEC orders a continuous dedicated transport element from one point to another. *Id.* To the extent that collocation is required for a CLEC to take advantage ofdedicated transport facilities, the CLEC may utilize any form ofcollocation. *Id*

(I) Qwest Is Providing Commercial Volumes at an Acceptable Level of Quality

Qwest's commercial volumes and performance demonstrate that Qwcst is providing dedicated transport to CLECs in Minnesota in a nondiscriminatory manner. As of December 31, 2002, Qwcst had in service 193 DS1 transport facilities and 144 DS3 transport facilities for 10 CLECs in Minnesota. *Id.* ¶ 19.